EXHIBIT 2
DATE 2-19-2009
HB HB 486

Montana Association of REALTORS® Political Affairs

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Testimony of Montana Association of REALTORS® (MAR)
Glenn Oppel, Government Affairs Director
House Local Government Committee
Feb. 19, 2009, 3:00 p.m., Rm 172

House Bill 486 – Generally revise land use and planning laws
Sponsor: Rep. Gary MacLaren

MAR Position: Support

HB 486 is based on a consensus bill from the 2007 Session (Senate Bill 110) supported by the REALTORS®, the Builders, MACo, League of Cities and Towns, Smart Growth, and Planners intended to clean up and modernize parts of annexation, zoning, and subdivision law. The bill appears generally to do just that and is for the most part a very positive and supportable bill.

Section 4 clarifies the issue of free holders versus real property owners. "Free Holders" is a term which has crept into the Planning and Zoning Commission sections and does not generally exist otherwise. It added enough confusion to protest considerations that a court action was almost guaranteed. "Real property owners" is a defined and generally understood term which does simplify matters quite a bit.

Section 5 addresses the issue that many counties do not have a legitimate "surveyor," adding the option of putting the county clerk and recorder on the Planning and Zoning Commission is likely a positive. This would allow for an elected official with more land use experience to be present. Currently most counties have combined the office of surveyor with another office that has very little to do with those duties, such as treasurer, county attorney, or even sheriff.

Section 6 creating 76-2-107 allows for the simplification of the removal of a voluntary zoning district with no regulations. Circumstances do occur when a voluntary zoning district is formed and then through various problems, no regulations are enacted.

Section 7 modifies the language of what zoning does. The ability of commissioners to regulate though zoning construction, alteration, and repair of buildings is pretty straightforward. And the "use of buildings" is a fairly normal zoning technique as well.

Section 8 again attempts to modernize language – this time the language of 76-2-203. The prior language derives from the original enactment of the statute which flows from anti-tenement statutes in New York City in the late 20s or early 30s. The terms, not surprisingly then, do not have a very good fit to Montana. Zoning regulations must be designed to eliminate or facilitate something.

Section 9 is designed again to clarify the free holders versus real property owners issue.

Section 10 modified section 76-2-304 to modernize the language regarding what zoning regulations must be designed to do. The comments for section 8 apply here as well.

Section 11, the addition of aggregations of land being exempted from subdivision review, is beneficial to the REALTORS®. By maintaining subsection 2a, requiring that when there are 6 or more lots involved it must go before the governing body, any real benefit in terms of a work around to the subdivision and platting act is lost for the REALTORS®. However, this change is by no means a bad thing and clarifies and preserves something that most cities and counties have been doing. Additionally, it may create the ability to do some "subdivision" like activities with the modification of 5 or fewer lots.

Section 12 modifies section 76-3-504 to require county or city subdivision regulations to set a time limit within which a written decision on a subdivision is provided to the applicant. This is certainly a positive step.

Section 13 modified section 76-3-506 and section 16 which modified 76-3-609 very much work together. The changes to 76-3-609 do what they intend to do which is prohibit public hearings and their additional time, expense, and hassle for first minor subdivisions.

Section 14 modifying 76-3-507 clarifies that to eliminate any confusion regarding what types of bonds or securities are acceptable. All local governments generally accept Letters of Credit for this provision.

Section 15 modifies section 76-3-608 in two ways. The first is fairly innocuous, in that it adds a requirement that easements for utilities be shown going to the subdivision not just within the subdivision. In essence this requires a developer to show that electrical power can reach the subdivision.

Section 16, the notes above for section 13 would apply here as well.

Section 17 dovetails into those modifications that were made in section 14 regarding bondable improvements and the comments for section 17 are the same.

Section 18 is very similar to section 12 and again while it is beneficial that it requires a written statement within a time frame, as to why the subdivision was denied, it would be far better to mandate a specific time.

Section 19 modified section 76-3-625 to clarify that an appeal is taken within 30 days from the date of the written decision. This is a beneficial clarification to everyone.

Section 20 repeals section 76-3-210. With the elimination of 76-3-608(6) this is now a superfluous section.

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